

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE DISTRICT OF MASSACHUSETTS

3                   JAYME GORDON,   )  
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BEFORE THE HONORABLE JOSEPH L. TAURO  
UNITED STATES DISTRICT JUDGE

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United States District Court  
1 Courthouse Way, Courtroom 22  
Boston, Massachusetts  
April 9, 2013, 11:06 a.m.

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LEE A. MARZILLI  
OFFICIAL COURT REPORTER  
United States District Court  
1 Courthouse Way, Room 7200  
Boston, MA 02210  
(617) 345-6787

1 A P P E A R A N C E S:

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## PROCEDING S

2 THE CLERK: This is Civil Action No. 11-10255,  
3 Gordon v. DreamWorks. If counsel could identify themselves  
4 for the record.

5 MR. ZAVIN: Good morning, your Honor. Gregory  
6 Madera, Fish & Richardson, counsel for the plaintiff, Jayme  
7 Gordon. With me, Michael Kane, Juanita Brooks, Kristen  
8 McCallion, all of Fish & Richardson, and our co-counsel,  
9 Mark Fisher of Duane Morris. Ms. Brooks will be speaking on  
10 behalf of --

11 | THE COURT: Okay, thank you.

12 MS. BROOKS: Good morning, your Honor.

13 THE COURT: We have half the Bar of Boston here.

14 MR. ZAVIN: Well, we have slightly less than half  
15 the Bar. Good morning, your Honor. Jonathan Zavin of Loeb  
16 & Loeb for defendants Paramount and DreamWorks, and with me  
17 are John Shope and David Kluft of Foley Hoag.

18 THE COURT: Okay, and we're here primarily, we  
19 have a motion for reconsideration? Is that --

20 MR. ZAVIN: Well, your Honor, in fairness, this  
21 conference was originally scheduled by the Court as a status  
22 conference. We filed a motion for reconsideration on  
23 Friday.

24 THE COURT: You haven't had a chance to respond  
25 yet?

1 MS. BROOKS: That's correct, your Honor. Our moving  
2 papers would not be due until a week from this Friday --

3 THE COURT: I understand.

4 MS. BROOKS: -- although in the interest of time, we  
5 are prepared to argue it today if your Honor would like to hear  
6 argument.

7 THE COURT: No. Whatever makes you most comfortable,  
8 and I don't want to push anybody. Why don't we do this: What  
9 do you consider that we have on the menu today?

10 MS. BROOKS: Your Honor, in our case, we believed that  
11 we were coming here to get a trial date. Based upon your  
12 Honor's ruling on the summary judgment motions and the motion  
13 to dismiss, we're now ready for trial.

14 THE COURT: How long will it take to try this case?

15 MS. BROOKS: In our opinion, your Honor, since  
16 DreamWorks has tried a previous case involving a Mr. Dunn who  
17 had made allegations regarding Kung Fu Panda, they tried that  
18 in two weeks in Los Angeles. We believe it shouldn't take  
19 longer than two weeks, but we will be prepared to take as long  
20 as your Honor is willing to give us or however long DreamWorks  
21 thinks it's going to take.

22 MR. ZAVIN: Your Honor, may I just ask a question  
23 before I answer that?

24 THE COURT: Sure.

25 MR. ZAVIN: What is your Honor's standard trial day,

1 and do you try cases five days a week to a jury?

2 THE COURT: Is this jury or jury waived?

3 MS. BROOKS: It will be a jury trial, your Honor, yes.

4 THE COURT: 10:00 to 1:00, 2:15 to 4:30, and once we  
5 start the case, we go Fridays right through.

6 MR. ZAVIN: Your Honor, our best --

7 THE COURT: We usually don't start anything new on a  
8 Friday because we can't impanel on Fridays. You know, we have  
9 to impanel on Mondays. So most of the time we don't start  
10 anything new, but if we're in the middle of something, the fact  
11 that Friday appears on the calendar doesn't affect us. We  
12 continue to try the case.

13 MR. ZAVIN: Based on that, your Honor, I expect this  
14 case would take approximately four weeks. The reason for that  
15 is that in looking at our witness list, we have approximately  
16 twenty witnesses. We tried to cut that down to fifteen, but at  
17 the moment we anticipate twenty witnesses, and, given your  
18 Honor's trial schedule, I anticipate four weeks for trial.

19 THE COURT: Okay.

20 (Discussion between the Court and Law Clerk.)

21 THE COURT: Zita, do you have a trial date?

22 (Discussion between the Court and Clerk.)

23 THE COURT: We originally thought that we might be  
24 able to get this done before the summer, but for logistical and  
25 practical reasons, it's not going to happen here. Not your

1 fault, but it's impossible for me to do it. So I think we'll  
2 probably be setting a trial date sometime in September. That  
3 way I can give you an opportunity to give me your studied  
4 response to the motion for reconsideration, and also I think  
5 you have a motion for an interlocutory appeal?

6 MR. ZAVIN: That's correct, your Honor. It's for  
7 reconsideration, or, in the alternative, for an interlocutory  
8 appeal.

9 THE COURT: So I think it's better that we just mosey  
10 along with it. When are you scheduled to respond?

11 MS. BROOKS: We are scheduled to respond a week from  
12 Friday, your Honor, although we can do it more rapidly if that  
13 will --

14 THE COURT: No, no, more rapidly is always  
15 frightening. I mean, everybody does things more rapidly, and  
16 then they usually do them wrong. We'll take our time, give me  
17 your best shot, and I'll give you my best answer, okay?

18 MS. BROOKS: Thank you, your Honor. Could we get a  
19 tentative trial date, assuming that the Court denies their  
20 motion for reconsideration and the motion for interlocutory  
21 appeal, in light of the fact that interlocutory appeals are, as  
22 Judge Woodlock said, "as rare as hen's teeth," and anticipating  
23 that it probably won't take place and we will be going to  
24 trial? We filed this case in February of 2011, and obviously  
25 Mr. Gordon is rather anxious to get his day in court. We're

1 prepared to go to trial anytime after September 23, and do you  
2 have a four-week time blocked out other than the first two  
3 weeks of November? That's the only conflict that I have on my  
4 calendar, your Honor, between now and the end of the year, or I  
5 should say between September 23 and --

6 THE COURT: And you're suggesting September -- what is  
7 it, September --

8 MS. BROOKS: 23, your Honor, Monday, September 23.

9 MR. ZAVIN: And, your Honor, I would request we start,  
10 if there's a trial date to be set, sometime in October because  
11 I have a problem. All of my witnesses are in California.  
12 September is filled with the Jewish holidays, and I'm going to  
13 have a problem, just a physical problem, one, getting people  
14 here in September and preparing them in September.

15 MS. BROOKS: Your Honor, my calendar is wide open for  
16 October, so October 1?

17 MR. ZAVIN: Well, I was suggesting mid-October, but  
18 now I understand Ms. Brooks has a problem in November.

19 Alternatively --

20 THE COURT: Well, you know, she's been pretty  
21 accommodating, so why don't we just say October 1. What's  
22 wrong with that date?

23 THE CLERK: That's a Tuesday.

24 THE COURT: We have to impanel on the day before.

25 MS. BROOKS: Monday, September 30, your Honor, and the

1 Jewish holidays are long over by then.

2 MR. ZAVIN: Your Honor, that makes it more difficult.  
3 I mean, one of --

4 THE COURT: You know, you remind me of the old joke,  
5 "Ready until reached, your Honor."

6 MR. ZAVIN: No, your Honor. We're talking about a  
7 couple of weeks here, your Honor. I'm not trying to postpone  
8 the trial. And in terms of the plaintiff being anxious, the  
9 plaintiff waited almost three years after this movie came  
10 out --

11 THE COURT: Forget about anxious. You know, I've  
12 taken the dates all the way from what I wanted, which is the  
13 next couple of weeks, to the last working Monday in September.

14 (Discussion between the Court and Clerk.)

15 THE COURT: There's a lot of things that we will do  
16 better with our own schedule if we give you October 7.

17 MS. BROOKS: That would work fine, your Honor. Thank  
18 you.

19 THE COURT: Does that help you out a little bit?

20 MR. ZAVIN: It helps a bit, your Honor. Thank you.

21 THE COURT: Really, thank her. She runs the place.

22 (Laughter.)

23 MR. ZAVIN: Ms. Lovett, thank you.

24 THE COURT: Okay, so October 7 will be a tentative  
25 trial date. You can do more than pencil it in. Put it in with

1 some permanence.

2 Anything else? I'm sorry to have hauled you in here.

3 I thought that we were going to have -- unless you want to have  
4 your hearing on the motion now, I think you ought to the wait.

5 MS. BROOKS: If your Honor thinks we should wait, then  
6 we'll wait and file our moving papers.

7 THE COURT: Yes.

8 MR. ZAVIN: Your Honor, perhaps we should schedule a  
9 hearing on the motion for reconsideration. If your Honor is  
10 going to want argument on that, we can schedule that now so  
11 that we know that it works for everybody.

12 (Discussion between the Court and Clerk.)

13 MS. BROOKS: Your Honor, our understanding is that our  
14 opposition will be due by Friday, April the 19th, and that  
15 under the local rules, in light of this being a motion for  
16 reconsideration, they don't get a reply, so briefing will be  
17 complete by Friday, April 19.

18 MR. ZAVIN: Well, we would request permission to file  
19 a brief reply.

20 THE COURT: I will let you do that, and short, brief.

21 MR. ZAVIN: Yes. Our motion is short. Our reply will  
22 certainly be short.

23 THE CLERK: We can have the hearing sometime mid or  
24 the end of May.

25 MR. ZAVIN: I'm available the entire week of the 13th,

1 May 13, if that works for Ms. Brooks.

2 MS. BROOKS: That would work, either Monday, May 13,  
3 or -- I'm actually in trial in New Jersey, but we're only in  
4 session on the Tuesday and Wednesday that week, the 14th and  
5 15th. So I could either be here on Monday, the 13th, or  
6 Thursday, the 16th, at the Court's pleasure.

7 THE CLERK: It needs to be the following week.

8 May 23?

9 MR. ZAVIN: I have a trial in New York on the 23rd and  
10 the 24th, your Honor. I could do it earlier that week, the  
11 20th, the 21st.

12 THE CLERK: The 21st.

13 THE COURT: Is that okay?

14 MS. BROOKS: I won't be available, but somebody else  
15 from my team will be, your Honor. We'll make sure to get this  
16 covered.

17 MR. ZAVIN: What time would that hearing be?

18 THE CLERK: Eleven a.m.

19 MR. ZAVIN: Thank you. Your Honor, one other thing.  
20 In light of the tentative trial date --

21 THE COURT: We'll send out a memo, you know,  
22 memorializing all this so you get the dates right.

23 MR. ZAVIN: Okay. May I suggest -- I understand under  
24 the standard rules, motions in limine, for example, are due  
25 seven days prior to the trial date. Might I suggest that we do

1 those earlier because I suspect that both sides are going to  
2 have quite substantive motions in limine?

3 THE COURT: Why?

4 MR. ZAVIN: Because I believe that there's things that  
5 both sides will question whether should be in this trial, your  
6 Honor.

7 THE COURT: Well, you know --

8 MR. ZAVIN: This is just to give your Honor a chance  
9 to --

10 THE COURT: No, no, I understand, but I'm thinking  
11 back to my friend and colleague, Doug Woodlock, who is quoted  
12 as talking about hen's teeth. That's the way motions in limine  
13 are. You know, most of the time -- most of the time what the  
14 response is, "Denied without prejudice to raising it at trial."  
15 Why anybody thinks that, you know, I'm going to prefer writing  
16 a long memo dealing with motions in limine as opposed to  
17 dealing with the evidence as it comes at me in the courtroom, I  
18 don't know.

19 MR. ZAVIN: Well, it's your Honor's preference,  
20 obviously. I --

21 THE COURT: No, I'm going to hear you. I'm just  
22 saying, I wouldn't bet too much on the motions in limine. I  
23 think that most of the time my experience is that they're  
24 denied without prejudice to making sure that a proper  
25 foundation is established at trial. I mean, there's a

1 substantive reason why: Motions in limine, most of the time  
2 you can't judge them on the basis of a complete record.

3 MR. ZAVIN: Understood, your Honor. My suggestion  
4 was, given that we have an October 7 trial date, that we might  
5 want to do motions in limine, instead of seven days before, 14  
6 or even 21 days.

7 THE COURT: Yes, we can do that.

8 MR. ZAVIN: But that's up to you.

9 THE COURT: It's a reasonable suggestion. Can you  
10 work that out?

11 MR. ZAVIN: Yes, I'm sure Ms. Brooks and I can --

12 THE COURT: No, Ms. Lovett will give you a date.

13 (Discussion between the Court and Clerk.)

14 THE CLERK: Did you say three weeks before?

15 THE COURT: She's going to issue a trial order anyway,  
16 so she'll include this in her trial order, Ms. Lovett will.  
17 You want it three weeks before trial?

18 MR. ZAVIN: Yes.

19 THE COURT: Can you work that out? All right, she  
20 says she can work that out. Anything else?

21 THE CLERK: No. I think that's it.

22 THE COURT: Anything else from anybody?

23 MS. BROOKS: Nothing on our end, your Honor. Thank  
24 you.

25 MR. ZAVIN: No, your Honor. Thank you.

1           THE COURT: Are you interested in trying to settle  
2 this case, or don't you settle these cases?

3           MR. ZAVIN: DreamWorks does not settle cases of this  
4 kind, your Honor, not on this kind of claim.

5           THE COURT: Okay, just thought I would ask.

6           MR. ZAVIN: I understand, your Honor.

7           THE COURT: All right, thank you. You're all excused.

8           (Adjourned, 11:21 a.m.)

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## C E R T I F I C A T E

UNITED STATES DISTRICT COURT )  
DISTRICT OF MASSACHUSETTS ) ss.  
CITY OF BOSTON )

I, Lee A. Marzilli, Official Federal Court Reporter,  
do hereby certify that the foregoing transcript, Pages 1  
through 13 inclusive, was recorded by me stenographically at  
the time and place aforesaid in Civil Action No. 11-10255-JLT,  
Jayme Gordon v. DreamWorks Animation SKG, Inc., et al, and  
thereafter by me reduced to typewriting and is a true and  
accurate record of the proceedings.

14 Dated this 11th day of April, 2013.

/s/ Lee A. Marzilli

LEE A. MARZILLI, CRR  
OFFICIAL COURT REPORTER